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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,619	01/29/2004	Mark V. Vandewalle	5490-000363	5659
27572	7590	06/16/2006	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			WILLSE, DAVID H	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/767,619

Applicant(s)

VANDEWALLE, MARK V.

Examiner

Dave Willse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11, 18, 21, 25 and 35-49 is/are pending in the application.
- 4a) Of the above claim(s) 21, 25, 35-40 and 45-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 11, 18, 41, 43 and 44 is/are rejected.
- 7) ☒ Claim(s) 4-9 and 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Newly submitted or amended claims 21, 25, 35-40, and 45-49 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Many of the revised or added claims are directed to the embodiment or species illustrated in Figures 9-14 and independent or distinct from the originally claimed embodiment or species in that the clamping device connected to the cannulated follower member rotatably engaged with the cannulated driver member as originally claimed is not present in the description of Figures 9-14, and the lead screw (now claimed) is not an element of the species corresponding to Figures 1-8. Other claims in the above list are associated with a subcombination relative to the originally presented claims; for example, claim 21 as amended no longer requires a cannulated follower member, and the combination as claimed does not require the clamping device to be connected to the cannulated *driver* member. And claims 46 and 49, in which the clamping device is connected to both the driver member *and* the follower member (and which follower member is rotatably connected to the driver member), do not appear to be supported by *any* disclosed embodiment.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, these claims are withdrawn from consideration as being directed to a non-elected invention (37 CFR 1.142(b) and MPEP § 821.03).

The Applicant has failed to *specifically* point out the support in the original disclosure for each of the newly presented claims and claim limitations (MPEP § 714.02) and (except for any canceled claims) must do so in response to the current Office action.

The disclosure is objected to because of the following informalities: In claim 1, line 10, "as" should be deleted. Appropriate correction is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 11, 18, 41, 43, and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Schoenefeld, US 6,827,722 B1. Regarding claim 1 and others, the first embodiment, for example, includes a cannulated driver member **26** configured to engage a medical device such as cannulated bone fastener **66**, a cannulated follower member **22** rotatably engaged with the driver member (column 4, lines 24-25), and a clasping device **24** connected to the follower member via threaded surfaces **30** and **32** (column 3, lines 20-22). Because the driver member is slidable within the follower member (column 4, lines 29-30), the follower member moves at an extraction rate relative to the driver member in response to rotation of the driver member (column 4, lines 30-32; Figure 4). Regarding claim 2, attention is directed to cannulated engaging member **68**. Regarding claim 11, the guide wire is rotationless relative to the driver member during the procedure described at column 4, lines 32-36; therefore, the device is configured such that the follower member **22** *may* be rotated while holding the driver member **26** and the guide wire **58** rotationless so as to disengage the guide wire (column 3, lines 53-55; column 3, line 66, through column 4, line 1; Figures 3C and 3B). Regarding claim 43, the device is *capable* of holding the guide wire **58** rotationless when a pin, nail, or similarly driven medical device is inserted into bone.

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Claims 4-9 and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The Applicant's remarks have been considered but are deemed moot in view of the above grounds of rejection, which were necessitated by the claim amendments pertaining to the engagement of the guide wire by the clasp device (claim 1) or the cannulated follower member (claim 41) and other revisions. Therefore:

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is 571-272-4762. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



**Dave Willse**  
**Primary Examiner**  
**Art Unit 3738**